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of the State of California
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California Department of Justice
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Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DAVID M. WININGS
P.O. Box 10720
Palm Desert, CA 92255

Certified Public Accountant No. 62403

and

DAVID M. WININGS, CPA, AN
ACCOUNTANCY CORPORATION
73261 Highway 111, Suite 9
Palm Desert, CA 92260

Certified Public Accountancy Corporation No.
5457

Respondents.

Case No. AC-2006-14

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Carol Sigmann (Complainant) is the Executive Officer of the California
Board of Accountancy. She brought this action solely in her official capacity and is represented
in this matter by Bill Lockyer, Attorney General of the State of California, by Rita M. Lane,
Deputy Attorney General.

2. Respondents David M. Winings and David M. Winings, CPA an Accountancy Corporation are represented in this proceeding by attorney Scott Vick, whose address is The Water Garden, 1620 26th Street, 4th Floor, North Tower, Santa Monica, CA 90404-4060.

3. On or about July 31, 1992, the California Board of Accountancy issued Certified Public Accountant License No. 62403 to David M. Winings, and on or about September 2, 2004 issued CPA Corporation No. 5457 to David M. Winings, CPA an Accountancy Corporation (Respondents). The Certified Public Accountant License No. 62403 was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2006-14 and will expire on August 31, 2007, unless renewed. Certified Public Accountancy Corporation Certificate No. 5457 was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2006-14 and will expire on September 30, 2006, unless renewed.

JURISDICTION

4. Accusation No. AC-2006-14 was filed before the California Board of Accountancy (Board), Department of Consumer Affairs, and is currently pending against Respondents. The Accusation and all other statutorily required documents were properly served on Respondents on April 20, 2006. Respondents timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2006-14 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondents have carefully read, fully discussed with counsel, and understand the charges and allegations in Accusation No. AC-2006-14. Respondents have also carefully read, fully discussed with counsel, and understand the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondents are fully aware of their legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at their own expense; the right to confront and cross-examine the witnesses against them, the right to present evidence and to testify on their own behalf; the right to the issuance of

subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondents voluntarily, knowingly, and intelligently waive and give up each and every right set forth above.

CULPABILITY

8. Respondents admit the truth of each and every charge and allegation in Accusation No. AC-2006-14.

9. Respondents agree that their Certified Public Accountant and Accountancy Corporation Licenses are subject to discipline and they will be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the California Board of Accountancy. Respondents understand and agree that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondents or their counsel. By signing the stipulation, Respondents understand and agree that they may not withdraw their agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1. **Obey All Laws.** Respondents shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. **Personal Appearances.** Respondents shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

5. **Practice Investigation.** Respondents shall be subject to, and shall permit, practice investigation of the Respondents' professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

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1 6. **Comply With Citations.** Respondents shall comply with all final orders
2 resulting from citations issued by the Board of Accountancy.

3 7. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
4 Respondents should leave California to reside or practice outside this state, Respondents must
5 notify the Board in writing of the dates of departure and return. Periods of non-California
6 residency or practice outside the state shall not apply to reduction of the probationary period, or
7 of any suspension. No obligation imposed herein, including requirements to file written reports,
8 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise
9 affected by such periods of out-of-state residency or practice except at the written direction of the
10 Board.

11 8. **Violation of Probation.** If Respondents violate probation in any respect,
12 the Board, after giving Respondents notice and an opportunity to be heard, may revoke probation
13 and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke
14 probation is filed against Respondents during probation, the Board shall have continuing
15 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
16 is final.

17 9. **Completion of Probation.** Upon successful completion of probation,
18 Respondents' licenses will be fully restored.

19 10. **Ethics Course/Examination.** Respondent Winings shall take and pass
20 with a score of 90 percent or better a Board approved ethics examination within 180 days of the
21 effective date of the Decision in this case.

22 If Respondent Winings fails to pass said examination within the time period
23 provided or within two attempts, Respondent shall so notify the Board and shall cease practice
24 until Respondent takes and successfully passes said exam, has submitted proof of same to the
25 Board, and has been notified by the Board that he may resume practice. Failure to pass the
26 required examination no later than 100 days prior to the termination of probation shall constitute
27 a violation of probation.

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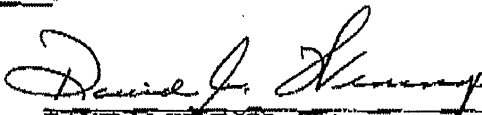
1 Notwithstanding any other provision of this probation, failure to take and pass this
2 examination within five years of the effective date of this order constitutes a separate cause for
3 discipline of Respondent's license.

4 11. **Cost Reimbursement.** Respondents shall reimburse the Board \$3,146.50
5 for its investigation and prosecution costs. The payment shall be made within six (6) months of
6 the date the Board's decision is final.

7 **ACCEPTANCE**

8 I have carefully read the above Stipulated Settlement and Disciplinary Order and
9 have fully discussed it with my attorney, Scott Vick. I understand the stipulation and the effect it
10 will have on my Certified Public Accountant's License and that of my Certified Public
11 Accountancy Corporation License. I enter into this Stipulated Settlement and Disciplinary Order
12 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
13 California Board of Accountancy.

14 DATED: JUNE 12, 2006

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17 DAVID M. WININGS, CPA
Respondent

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20 DAVID M. WININGS, CERTIFIED PUBLIC
ACCOUNTANCY CORPORATION
Respondent

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22 I have read and fully discussed with Respondent David M. Winings and David M.
23 Winings, CPA an Accountancy Corporation the terms and conditions and other matters contained
24 in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

25 DATED: June 13, 2006

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28 SCOTT VICK
Attorney for Respondent

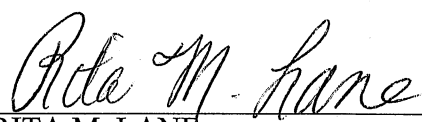
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: 6-28-06.

BILL LOCKYER, Attorney General
of the State of California



RITA M. LANE
Deputy Attorney General

Attorneys for Complainant

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CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2006-14

DAVID M. WININGS
P.O. Box 10720
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Certified Public Accountant No. 62403

and

DAVID M. WININGS, CPA, AN
ACCOUNTANCY CORPORATION
73261 Highway 111, Suite 9
Palm Desert, CA 92260

Certified Public Accountancy Corporation No.
5457

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 25, 2006.

It is so ORDERED July 26, 2006.


FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

Exhibit A

Accusation No. AC-2006-14

1 BILL LOCKYER, Attorney General
of the State of California
2 RITA M. LANE, State Bar No. 171352
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101

5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2614
Facsimile: (619) 645-2061

7 Attorneys for Complainant
8

9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2006-14

13 **DAVID M. WININGS**
P.O. Box 10720
14 Palm Desert, CA 92255

A C C U S A T I O N

15 Certified Public Accountant
Certificate No. 62403

16 and
17

DAVID M. WININGS, CPA
18 **AN ACCOUNTANCY CORPORATION**
73261 Highway 111, Suite 9
19 Palm Desert, CA 92260

20 Certified Public Accountancy
Corporation Certificate No. 5457

21 Respondents.
22

23 Complainant alleges:

24 **PARTIES**

- 25 1. Carol Sigmann (Complainant) brings this Accusation solely in her official
26 capacity as the Executive Officer of the California Board of Accountancy (Board).
- 27 2. On or about July 31, 1992, the Board issued Certified Public Accountant
28 Certificate Number 62403 to David M. Winings (Respondent). The license was in full force and

effect at all times relevant to the charges brought herein and will expire on August 31, 2007, unless renewed.

3. On or about September 3, 2004, the Board issued Certified Public Accountancy Corporation Certificate Number 5457 to David M. Winings, CPA, An Accountancy Corporation (Corporate Respondent). The license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2006, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board under the authority of Business and Professions Code section 5000 et seq. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 5100 states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

• • • •

(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

• • • •

(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

• • • •

(1) The imposition of any discipline, penalty, or sanction on a registered public accounting firm or any associated person of such firm, or both, or on any other holder of a permit, certificate, license, or other authority to practice in this state, by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission, or their designees under the Sarbanes-Oxley Act of 2002 or other federal legislation.

6. Pursuant to the California Code of Regulations, Title 16, section 52 a licensee shall respond to any inquiry by the Board within 30 days. The licensee's response shall include making all files, working papers and other documents available for inspection.

FACTUAL BASIS

7. Pursuant to the Sarbanes-Oxley Act of 2002 (Act), section 102 and Rule 2100 of the Public Company Accounting Oversight Board (PCAOB), any person that issues an audit report with respect to an "issuer" must be registered with PCAOB. An "issuer" is defined in Section 3 of the Securities Exchange Act of 1934 and PCAOB Rule 1001(i)(iii) as any person who issues or proposes to issue any security.

8. On or about September 24, 2004, Respondent David M. Winings, as owner and president of "David M. Winings, CPA, An Accountancy Corporation" (Corporate Respondent) filed a registration application with PCAOB. On the application under Item 2.2, the applicant is required to disclose certain information concerning issuers for which the applicant prepared the audit reports during the calendar year in which the application was filed. PCAOB Rule 2101 mandates that any applicant must complete the application form by following all form directions.

9. Under Item 2.2, Respondents disclosed that audit reports were prepared for the following companies during the current calendar year: Animal Cloning Sciences (Animal Cloning), Apex Capital Group, Inc. (Apex), Asian Financial Inc. (Asian Financial), Silver Bow Antique Aviation (Silver Bow), Woodstock Tree Farms, Inc. (Woodstock), Meditechnic, SA and Space Launches Financial. Animal Cloning, Apex, Asian Financial, Silver Bow, and Woodstock are all issuers under the Act.

10. Respondents failed to disclose the audit report which was prepared for Knickerbocker Capital Corporation (Knickerbocker) dated March 23, 2004, on his application under Item 2.2. Knickerbocker is also an issuer under the Act.

11. On November 10, 2004, PCAOB issued Respondents a notice of hearing regarding the application, and Respondents timely requested a hearing. The case then settled and PCAOB issued an Order Making Findings and Disapproving Registration Application on April 18, 2005. Respondents consented to the entry of the Order without admitting or denying the findings.

///

1 12. The PCAOB in its Order made these findings: 1) that Respondents
2 prepared audit reports for six issuers at a time when they were not registered with PCAOB
3 violating section 102(a) of the Act and PCAOB Rule 2100; 2) Respondents failed to provide
4 specific information regarding the Knickerbocker audit on the application under Item 2.2
5 violating PCAOB Rule 2101; and 3) Respondents' violations resulted from failure to exercise the
6 degree of care that the PCAOB would expect from a public accounting firm.

7 13. On or about May 9, 2005, the California Board of Accountancy (Board)
8 received notification from PCAOB that they had disapproved the registration application of
9 Respondents. A copy of the Order was included.

10 14. On or about May 12, 2005, the Board writes a letter to Respondents asking
11 for an explanation regarding PCAOB's actions and also to submit a copy of the Knickerbocker
12 audit report, with financial statements, engagement letter and a copy of the PCAOB application.
13 The Board did not receive a response from Respondents.

14 15. Almost three months later, on or about August 4, 2005, the Board sent a
15 second, follow-up letter to Respondents via certified and regular mail requesting the same
16 information as the first letter. The letter sent certified was delivered and signed for on August 8,
17 2005, however the signature was unreadable. The Board did not receive a response from
18 Respondents.

19 **FIRST CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct)

21 16. Respondents David M. Winings and David M. Winings, CPA, An
22 Accountancy Corporation are subject to disciplinary action under section 5100 for unprofessional
23 conduct by issuing seven audit reports to the PCAOB without being registered with the PCAOB
24 in violation of PCAOB rules as described in paragraphs 7-12.

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1 COST RECOVERY/RESTITUTION

2 20. Code section 5107 provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licensee found to have committed a violation or
4 violations of section 5100 to pay a sum not to exceed the reasonable costs of the investigation
5 and prosecution of the case.

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7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board issue a decision:

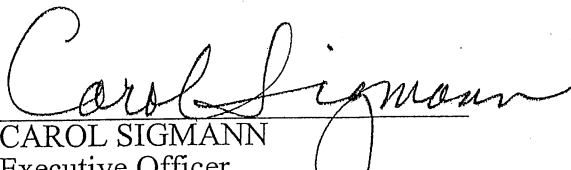
10 1. Revoking, suspending or otherwise imposing discipline upon Certified
11 Public Accountant Certificate Number 62403, issued to David M. Winings;

12 2. Revoking, suspending or otherwise imposing discipline upon Certified
13 Public Accountancy Corporation Certificate Number 5457, issued to David M. Winings, CPA,
14 An Accountancy Corporation;

15 3. Ordering David M. Winings and David M. Winings, CPA, An
16 Accountancy Corporation to pay the Board the reasonable costs of the investigation and
17 prosecution of this case, pursuant to Business and Professions Code section 5107; and

18 4. Taking such other and further action as deemed necessary and proper.

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20 DATED: April 13, 2006

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22 
23 CAROL SIGMANN
24 Executive Officer
25 California Board of Accountancy
26 Department of Consumer Affairs
27 State of California
28 Complainant

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